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Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields

Eradication of poverty and other development issues

Follow-up to the outcome of the Millennium Summit

Letter dated 7 November 2008 from the Permanent Representatives of Guatemala and Switzerland to the United Nations addressed to the Secretary-General

On behalf of the delegations of Benin, Brazil, Canada, Finland, Honduras, Iceland, Indonesia, Madagascar, Mexico, Nigeria, Norway, Peru, Spain and the United Republic of Tanzania, we have the honour to transmit herewith the executive summary of the final report of the Commission on Legal Empowerment of the Poor, entitled "Making the law work for everyone".

In the light of the importance of the report and its relevance to the work of the United Nations, particularly in the economic and social fields, we would appreciate if the present letter and its annex were to be issued as a document of the sixty-third session of the General Assembly, under agenda items 44, 53 and 107.

(*Signed*) Gert **Rosenthal**
Permanent Representative of Guatemala to the United Nations

(*Signed*) Peter **Maurer**
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Annex to the letter dated 7 November 2008 from the Permanent Representatives of Guatemala and Switzerland to the United Nations addressed to the Secretary-General

[Original: Arabic, English, French and Spanish]

Executive Summary

The spectre of poverty and the resultant suffering from want and fear have been realities for so long that poverty is often deemed to be a natural and inevitable part of the human condition. In earlier times, when the struggle merely to survive was paramount for most people, this conclusion seemed reasonable, perhaps even unavoidable. In our era, however, we have every possibility to make economic opportunity broadly available. In the last six decades, more wealth has been created than in all previous history. No longer can it be argued that poverty is natural or inevitable.

Though many have shared in this prosperity, far too many of the world's people have been left behind, still living in deprivation, taking talent unused to the grave. Sub-Saharan Africa is not on track to achieve any of the Millennium Development Goals and extreme poverty persists on every continent. Statistics abound of the number of people that live in extreme income poverty, no matter how hard they work. And lack of income is just one dimension of poverty.

This Commission argues that four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law.[1] Whether living below or slightly above the poverty line, these men, women, and children lack the protections and rights afforded by the law. They may be citizens of the country in which they live, but their resources, modest at best, can neither be properly protected nor leveraged. Thus it is not the absence of assets or lack of work that holds them back, but the fact that the assets and work are insecure, unprotected, and far less productive than they

might be. There are further vulnerabilities, as well. Indigenous communities may be deprived of a political voice and their human rights violated. In addition to exclusion based on their poverty and their gender, poor women may also be denied the right to inherit property. In our own era then, vast poverty must be understood as created by society itself.

In too many countries, the laws, institutions, and policies governing economic, social, and political affairs deny a large part of society the chance to participate on equal terms. The rules of the game are unfair. This is not only morally unacceptable; it stunts economic development and can readily undermine stability and security. The outcomes of governance – that is, the cumulative effect of policies and institutions on peoples' lives – will only change if the processes of governance are fundamentally changed.

The Commission...

The Commission on Legal Empowerment of the Poor was created to address this challenge. It is comprised of 21 Commissioners, including former heads of state and government, cabinet ministers, jurists, economic researchers, and other senior policymakers from the North, South, East and West. We hold diverse views regarding the pluses and minuses of globalisation but agree on the imperative of finding better ways to fight poverty and exclusion. During the past three years, we conducted 22 national consultation processes with representatives from local governments, academia, civil society, and grassroots movements. We launched five technical working groups, which submitted specialised reports. We drew on our own experience, reviewed relevant literature, talked to people from all walks of life, and debated with national and international policymakers and amongst ourselves. We have seen and heard success stories, and we believe there is compelling evidence that when poor people are accorded the protections of the rule of law, they can prosper.

... and its Assessment: Four Billion Lives Excluded

The Commission believes poverty is man-made, by action and inaction, and a failure of public policies and of markets. The Commission sees that in rich countries people are more likely to enjoy access to justice and other rights – as workers, businesspeople, and owners of property. The recent, and vast, creation of wealth rests upon various legal protections, norms, and instruments governing such things as business organisations, corporations, tradable assets, labour contracts, workers associations, venture capital, insurance, and intellectual property. While the same protections and instruments exist in many developing countries, the overwhelming majority has no way to access them. Notwithstanding this reality, the legal underpinnings of entrepreneurship, employment, and market interaction are often taken for granted by traditional approaches to development and standard economic theory. Contracts and property rights are assumed to be in place, and what transpires in the informal economy is scarcely taken into account. In fact, most development initiatives tend to focus on the official economy, the formal legal system, and institutions at the national rather than the local level.

However, most poor people do not live under the shelter of the law, but far from the law's protection and the opportunities it affords. Informal local norms and institutions govern their lives and livelihoods, and where they are not excluded from the legal system, they are often oppressed by it. Because the poor lack recognised rights, they are vulnerable to abuse

by authorities that discriminate, seek bribes, or take the side of powerful interests who may wish to prevent the poor from competing economically or seek to evict them from their land. Such discrimination has massive consequences. The Commission finds that at least four billion people are excluded from the rule of law. It is the minority of the world's people who can take advantage of legal norms and regulations. The majority of humanity is on the outside looking in, unable to count on the law's protection and unable to enter national, let alone global markets.

Legal Empowerment of the Poor as a Development Strategy

When the law works for everyone, it defines and enforces the rights and obligations of all. This allows people to interact with one another in an atmosphere that is certain and predictable. Thus, the rule of law is not a mere adornment to development; it is a vital source of progress. It creates an environment in which the full spectrum of human creativity can flourish, and prosperity can be built. The Commission understands legal empowerment to be a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.

The law is the platform on which rest the vital institutions of society. No modern market economy can function without law, and to be legitimate, power itself must submit to the law. A thriving and inclusive market can provide the fiscal space that allows national governments to better fulfil their own responsibilities. The relationship between society, the state and the market is symbiotic. For example, the market not only reflects basic freedoms such as association and movement, but also generates resources to provide, uphold, and enforce the full array of human rights. It is processes such as these, in which the poor realise their rights and reap the benefits of new opportunities, which enable the fruition of citizenship – in short, legal empowerment.

If law is a barrier to the poor who wish to better their condition, if it is seen as an obstacle to dignity and security, then the idea of law as a legitimate institution will soon be renounced. If

the law is accepted and understood as offering protection and equality of opportunity, and ensuring access to fair and neutral process, then the law will be revered as a foundation of justice.

There are no technical fixes for development. For states to guarantee their citizens' right to protection, systems can, and have to be changed, and changed systemically. Legal empowerment is a central force in such a reform process. It involves states delivering on their duty to respect, protect, and fulfil human rights, and the poor realising more and more of their rights, and reaping the opportunities that flow from them, through their own efforts as well as through those of their supporters, wider networks, and governments. The elements of legal empowerment are grounded in the spirit and letter of international human rights law, and particularly in Article 1 of the Universal Declaration of Human Rights, which declares, 'All human beings are born free and equal in dignity and rights.'

Democracy: Indispensable Means, Just End

The Declaration's fine words, written 60 years ago, are universally accepted but rarely fulfilled. If the poor are to be legally empowered, they must have effective, legally protected rights. These include the right to vote, the right to free expression, and the right to due process. It is a central purpose of democratic societies to provide these rights, and an ongoing challenge to do so consistently and equitably. International organisations, both regional and global, can help support the construction of democratic institutions through a variety of means.

Some have cautioned against democratisation while the rule of law remains imperfect. The Commission disagrees. Democracy and legal empowerment are kindred spirits, and are better synchronised than sequenced. In the absence of empowerment, societies lose the benefits that come from the free flow of information, open debate, and new ideas. Meanwhile, governments are not held accountable for unwise policies. There is a reason that no democracy has experienced famine, and that trends over several decades suggest democracies are less likely to become embroiled in conflict. There is, of course, no single model of democracy, but the needs of the poor can often be better voiced when decision-making is decentralised to the local level. The core principle underlying democracy, in all its forms, is that legitimate power is derived from the freely expressed will of the people. Strengthening democracy is essential to legal empowerment.

To the Reformers: Resistance and Reward

Transforming a society to include the poor requires comprehensive legal, political, social, and economic reforms. In the short term, reform is unlikely to seem an easy option. There is, however, a harvest to leadership. When the poor are able to find protection and opportunity in the legal system, practical benefits become evident. As the informal economy becomes documented the tax base is widened, increasing revenue for national development. Economic gains expand local markets and increase financial activity at all levels. As the rule of law spreads, the predatory networks that exploit vulnerable participants in the informal economy begin to unravel, and more and more people develop a stake in the reduction of crime and the maintenance of a peaceful social order. As this transformation occurs reform gains momentum and governments that have embraced reformist ideas are accorded increasing credibility, especially

among political constituencies whose voices had previously gone unheard. In this way, legal empowerment can embody and live out a compelling narrative for progress.

Legal empowerment is not a substitute for other important development initiatives, such as investing more in education, public services, and infrastructure, enhancing participation in trade, and mitigating and adapting to climate change: instead, it complements such initiatives, multiplying their impact by creating the conditions for success. People living in abject poverty need immediate assistance and specially targeted interventions. The provision of quality education, especially for girls, could not be more urgent. The Commission is convinced that the world's four billion excluded possess significant capabilities. If states and laws are reformed to appropriately recognise the poor, if the law can be made to work for everyone, those who are excluded will quickly begin to transcend their current circumstances and contribute to the solution of otherwise chronic economic and social problems.

The Four Pillars of Legal Empowerment of the Poor

In the course of its deliberations, and on the basis of the work of its thematic working groups, the Commission developed a comprehensive agenda for legal empowerment encompassing four crucial pillars that must be central in national and international efforts to give the poor protection and opportunities. Legal empowerment can only be realised through systemic change aimed at unlocking the civic and economic potential of the poor. The Commission's agenda includes: *access to justice and the rule of law, property rights, labour rights, and 'business rights'.** These four pillars reinforce and rely on each other. In their convergence and through their synergy, legal empowerment can be achieved.

First Pillar: Access to Justice and The Rule of Law

First among rights is that which guarantees all others: access to justice and the rule of law. Legal empowerment is impossible when, *de jure or de facto*, poor people are denied access to a well functioning justice system. Where just laws enshrine and enforce the rights and obligations of society, the benefits to all, especially the poor, are beyond measure. Ensuring equitable access to justice, though fundamental to progress, is hard to achieve. Even if the legal system is technically inclusive and fair, equal access to justice can only be realised with the commitment of the state and public institutions. Legal empowerment measures in this domain must:

- Ensure that everyone has the fundamental right to legal identity, and is registered at birth;
- Repeal or modify laws and regulations that are biased against the rights, interests, and livelihoods of poor people;
- Facilitate the creation of state and civil society organisations and coalitions, including paralegals who work in the interest of the excluded;
- Establish a legitimate state monopoly on the means of coercion, through, for example, effective and impartial policing;
- Make the formal judicial system, land administration systems, and relevant public institutions more accessible by recognising and integrating customary and informal legal procedures with which the poor are already familiar;

* 'Business rights' need not yet be regarded as a new term in law, but rather as derived from existing rights related to doing business of the individual, newly bundled together under this term on the basis of their vital instrumentality in the livelihoods of the poor.

- Encourage courts to give due consideration to the interests of the poor;
- Support mechanisms for alternative dispute resolution;
- Foster and institutionalise access to legal services so that the poor will know about laws and be able to take advantage of them;
- Support concrete measures for the legal empowerment of women, minorities, refugees and internally displaced persons, and indigenous peoples.

Second Pillar: Property Rights

Ownership of property, alone or in association with others, is a human right. A fully functioning property system is composed of four building blocks: a system of rules that defines the bundle of rights and obligations between people and assets reflecting the multiplicity and diversity of property systems around the world; a system of governance; a functioning market for the exchange of assets; and an instrument of social policy. Each of these components can be dysfunctional, operating against the poor. When the system fully functions, it becomes a vehicle for the inclusion of the poor in the formal economy, and a mechanism for their upward social mobility. When the entire system or a single component is dysfunctional, the poor are deprived of opportunity or discriminated against.

As reforms of property rights are inherently risky, full attention should be paid to securing the rights of the poor. Women, who constitute half the world's population, own only 10 percent of the world's property. Indigenous people and others also experience active discrimination. To ensure group rights, imaginative legal thinking is required. Providing the absolute poor with rights and access to assets means direct social interventions.

To be fully productive, assets need to be formally recognised by a system encompassing both individual and collective property rights. This includes recognition of customary rights. Embodying them in standard records, titles, and contracts, in accordance with the law, protects households and businesses. Evictions

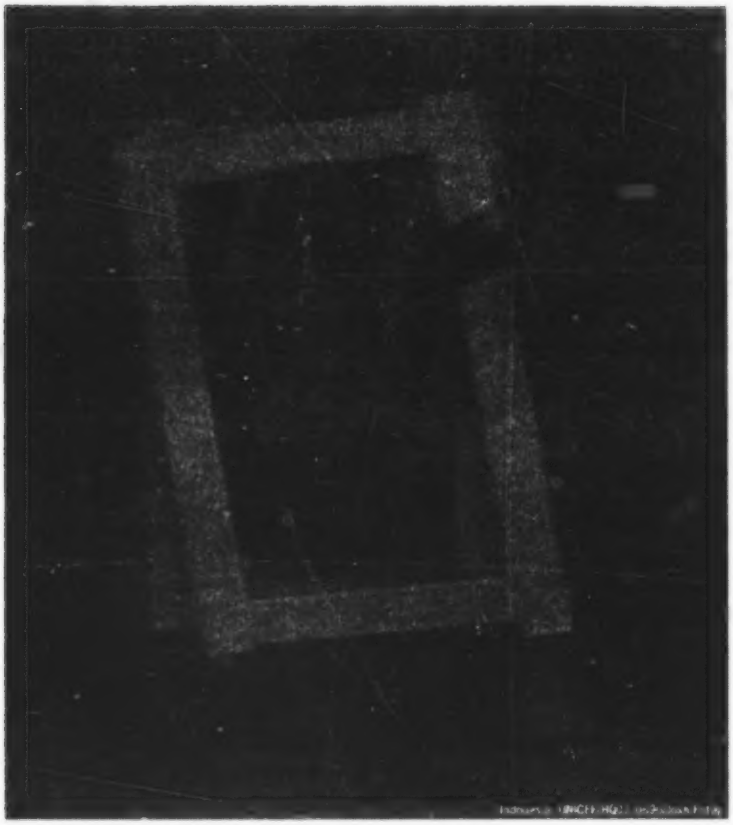
should only be an option in circumstances where physical safety of life and property is threatened, where contract agreements have been breached, or under fair eminent domain procedures. It must be by due legal process, equally applicable, contestable, and independent, and where the cost of eviction is fully compensated. Property rights, including tenure security, should not only be protected by law, but also by connecting the property of the poor to wide societal interest (by increasing the range of validation of their tenure security). The possibility is opened for the poor to use property as collateral for obtaining credit, such as a business loan or a mortgage. It encourages compliance by attaching owners to assets, assets to addresses, and addresses to enforcement; that is, making people accountable. As such, property reform can strengthen access to legal identity and to justice. Property records unify dispersed arrangements into a single legally compatible system. This integrates fragmented local markets, enabling businesses to seek out new opportunities outside their immediate vicinity, and putting them in the context of the law where they will be better protected by due process and association of cause. Legal empowerment measures in this domain must:

- Promote efficient governance of individual and collective property in order to integrate the extralegal economy into the formal economy and ensure it remains easily accessible to all citizens;
- Ensure that all property recognised in each nation is legally enforceable by law and that all owners have access to the same rights and standards;
- Create a functioning market for the exchange of assets that is accessible, transparent, and accountable;
- Broaden the availability of property rights, including tenure security, through social and other public policies, such as access to housing, low interest loans, and the distribution of state land;
- Promote an inclusive property-rights system that will automatically recognise real and immoveable property bought by men as the co-property of their wives or common-law partners.

Third Pillar: Labour Rights

The poor may spend most of their waking hours at the workplace, barely surviving on what they take from it. But labour is not a commodity. In the same way that property and the physical assets of the poor are recognised, so must the greatest asset of the poor – their labour and human capital – be effectively recognised. The legitimacy, even the acceptability, of the economy depends upon basic labour rights, as does the development of human capital necessary for sustained growth. In turn, the continuous improvement of labour and social rights depends on a successfully functioning market economy. The typical and tired pattern of low productivity, low earnings, and high risks must be replaced by the fulfilment of the *Fundamental Principles and Rights at Work* and the *Decent Work Agenda*, and the strategy to provide protection and opportunity to workers in the informal economy, a coalition described as an emerging global social contract. Here is how:

- Respect, promote, and realise freedom of association so that the identity, voice, and representation of the working poor can be strengthened in the social and political dialogue about reform and its design;
- Improve the quality of labour regulation and the functioning of labour market institutions, thereby creating synergy between the protection and productivity of the poor;
- Ensure effective enforcement of a minimum package of labour rights for workers and enterprises in the informal economy that upholds and goes beyond the *Declaration of*



Fundamental Principles and Rights at Work;

- Increase access to employment opportunities in the growing and more inclusive market economy;
- Expand social protection for poor workers in the event of economic shocks and structural changes;
- Promote measures that guarantee access to medical care, health insurance, and pensions;
- Ensure that legal empowerment drives gender equality, thus meeting the commitments under ILO standards that actively promote the elimination of discrimination and equality of opportunity for, and treatment of, women, who have emerged as a major force in poverty reduction in poor communities.

Fourth Pillar: Business Rights[2]

The Commission holds it to be self-evident that the poor are entitled to rights, not only when working for others but also in developing their own businesses. Access to basic financial services is indispensable for potential or emerging entrepreneurs. Just as important is access to protections and opportunities such as the ability to contract, to make deals, to raise investment capital through shares, bonds, or other means, to contain personal financial risk through asset shielding and limited liability, and to pass ownership from one generation to another. These rights may not be equally relevant to every entrepreneur but they are instrumental in poverty eradication and economic development. They must be accessible to all the many micro, small, and medium enterprises in the developing world – many operated by women - that employ a large portion of the labour force. The success or failure of this economic sector will often spell the difference between economic progress versus stagnation, increased employment versus widespread joblessness, and creation of a broader society of stakeholders versus deeper inequality leading to a weakened social contract. Legal empowerment measures in this domain must:

- Guarantee basic business rights; including the right to vend, to have a workspace, and to

have access to necessary infrastructure and services (shelter, electricity, water, sanitation);
- Strengthen effective economic governance that makes it easy and affordable to set up and operate a business, to access markets, and to exit a business if necessary;
- Expand the definition of 'legal person' to include legal liability companies that allow owners to separate their business and personal assets, thus enabling prudent risk-taking;
- Promote inclusive financial services that offer entrepreneurs in the developing world what many of their counterparts elsewhere take for granted – savings, credit, insurance, pensions, and other tools for risk management;
- Expand access to new business opportunities through specialised programmes to familiarise entrepreneurs with new markets and help them comply with regulations and requirements, and that support backward and forward linkages between larger and smaller firms.

Institutional Momentum and Implementation

To succeed, legal empowerment has to lead to systemic change, including institutional reform. In a comprehensive agenda, rather than a piecemeal approach the four pillars of legal empowerment reinforce each other. Effective institutions and laws that spell out rights and obligations give individuals the confidence to cooperate with others over time and distance, thereby steadily creating wealth. Productivity gains released through reform in one area carry over into others. Mechanisms for social protection and labour rights are closely linked to the development of a competitive and productive business environment. In legal empowerment, good things go together.

Political leadership is imperative. A comprehensive agenda will be best run not by individual ministries, in competition for support and attention, but by presidents and prime ministers in cooperation with ministers of finance, justice, and labour. Using their political authority, presidents and prime ministers can drive the agenda forward and create vital political momentum. But high office is not a precondition to effective leadership. Citizens and grass-roots organisations can create valuable momentum for change by educating the public and rallying around the themes of legal empowerment. Many improvements in the lives of the poor have been realised through social innovation. Legal Empowerment must also travel bottom-up.

The Commission's recommended approach to legal empowerment is different from traditional approaches to legal and institutional reform and does not involve off-the-shelf blueprints for implementation. National and local contexts differ, creating a varied array of hurdles and opportunities for reform that must be taken into account. Success, however, is likely to share common features. Broad political coalitions, drawing leaders from across society and committed to championing policies, will smooth the way to legal empowerment and help overcome resistance, diversion, and delay. Knowledge of, and being attuned to, the political context and reforms based on a deep and shared understanding of local conditions in both the formal and informal economy is essential. The gender dimension needs critical attention in all four domains, as do indigenous peoples' rights and customary law. The poor are not the objects of legal empowerment, but its co-designers and facilitators. They must participate and provide feedback in all phases of the reform, including the close monitoring of the results. Reform must grow from the realities and the needs of

the poor. The Commission is convinced that success is most likely where the will to achieve democracy is greatest.

How to Proceed in the Multilateral Realm

While the government is the key responsible actor, the 'duty bearer' in human rights terms, in a process of Legal Empowerment of the Poor, the United Nations and the broader multilateral system can help by lending their full support. The international non-governmental community can do the same. More specifically:

- The legal empowerment agenda must be integrated as a core concern of global multilateral agencies such as the World Bank, UNDP, ILO, FAO and UN-HABITAT. In their distinctive ways, these agencies influence how governments establish and implement the rules that define economic and social protections and opportunities. Their strategies and operational approaches must change in order for them to provide strong, sustained, and coordinated support to Legal Empowerment of the Poor. UNDP should take the lead and work with other UN agencies to develop a coherent multilateral agenda for legal empowerment;
- Legal Empowerment of the Poor must also become a core mission for regional political organisations, regional banks, and regional UN institutions. These organisations can work closely with national leaders both to assist governments engaged in reform and to exert a normative influence on governments less willing to embrace reform;
- Civil society and community-based organisations can contribute by connecting the poor to political institutions at every level, advocating better representation for the poor, organising support for reform agendas, and serving as independent auditors of the political system;
- The business community can smooth the way for legal empowerment through the UN Global Compact, and by supporting and participating in reform efforts on a local and national basis;
- Religious communities and indigenous spiritual traditions can play a unique and vital part in translating the moral imperatives of legal empowerment into concrete action;
- Various professional associations, including jurists, lawyers, land administration officials, surveyors and urban planners, can also play a role in gathering and disseminating information in their respective communities and networks. They can offer political support for legal empowerment and access to justice reform, as well as increased funding for necessary legal aid and other services.

Together, these initiatives should give:

- Coherent support for legal empowerment efforts in individual countries;
- Foster a political consensus for legal empowerment at the regional and global levels;
- Create new instruments for supporting legal empowerment, such as:
  - o A 'Global Legal Empowerment Compact' as a first step in codifying core rights and spelling out a framework for their realisation;
  - o Mechanisms for tracking progress at every level;
  - o A clearing-house for recording, storing, and disseminating experiences and lessons learned related to legal empowerment;
  - o Public-private partnerships;
  - o A global initiative to promote grass-roots knowledge and innovation.

In summary, the vast majority of the world's people live outside the law. This is a recipe for national and global stagnation. A state that is blind to itself is destined to fail. When so many people are excluded from the rule of law, societies are unable to reach their potential; every element of the economic system – from produc-

tivity and savings to investment and markets to planning and innovation – is deprived of energy and assets. This exclusion makes it harder for governments to meet national needs, and creates social conditions that can generate civil unrest and social disintegration.

The remedy for exclusion is inclusion through Legal Empowerment of the Poor. This is important economically, politically, socially, and morally. A country with laws and institutions that do not shut out the poor will benefit from the contributions of its entire population and from a legal, social, and economic order in which all segments of society have both a voice and a stake. Such countries will be better able to build national cohesion, and more likely to find a positive niche in the competitive world marketplace. The world as a whole will benefit as more and more states undertake the reforms needed to empower the poor. Such initiatives will help to reduce the pressures created by refugee migrations, under-development, famines, environmental neglect, health emergencies, and strife. In an interdependent world, we will all do better if our neighbours are both able to count on the protections of law and expected to live up to their responsibilities under it.

After all, our era is one of seismic shifts, not only in the economic order but also in the creation of a global public domain. Myriad ungoverned interactions flow between states, from the obvious to the near invisible, from the malign to the beneficent. Some must be curbed, some controlled, some eased and encouraged. Yet, as at the national level, our global institutions remain blind to much of reality, equipped rather for yesterday than today, hampering our attempts to grapple with each new problem we face. Who can deny that we all share a responsibility to protect: one which we are far from meeting? Whether for climate change, trade, migration, or security, the world will expect fair rules for the 21st century, rules offering protection and opportunity for all in accordance with shared human rights obligations.

Time for a Renewed Anti-poverty Agenda

It is time for a renewed anti-poverty agenda aimed at including the vast majority of the world's population in the systems of rights and obligations that have shown their ability to foster prosperity over the past 60 years. It is the responsibility of national and global leaders, and of us all, to enlarge that circle of opportunity and extend the reach of protection – not by replicating the trajectory of rich countries but by finding means that enable every country to chart its own path. Though methods will vary, the goal is the same – to enable and empower the poor to succeed both as individuals and contributors to the economic and social well-being of their communities. Further inaction and delay will send human talent early and unused to its grave, and blight the lives that remain.

Making poverty history cannot be accomplished through legal empowerment alone, but it is hard to see how it can be done without it. Legal Empowerment of the Poor recognises the complexity of society and the rich potential of the poor. By unleashing their energy and creativity, we have it within our power to forge a better, more prosperous, equal, and humane world. The time has come to unite in support of that vital and transforming task.